IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

NO. 834

PAUL GINSBURG, Petitioner,

v

HORACE STERN, ALLEN M. STEARNE, CHARLES ALVIN JONES, JOHN C. BELL, JR., THOMAS McKEEN CHIDSEY, MICHAEL A. MUSMANNO, and JOHN C. ARNOLD, individually and jointly as Justices of the Supreme Court of Pennsylvania, Respondents.

PETITION FOR REHEARING

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PETITION FOR REHEARING

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petition of Paul Ginsburg respectfully represents:

1. On April 14, 1958, this Honorable Court denied the petition for writ of certiorari in the above entitled case.

2. Because reason 3 for allowance of the writ (Petition, 15-20) sets forth "the numerous rights of which your petitioner was deprived by the respondents . . ."; and Petitioner's Reply Brief dated 31 March 1958 opens with the fully supported sentence, "The respondents' Brief in Opposition does not contain any factual or

legal opposition to the Petition whatever"; and the Reply Brief (3-4) shows that "Page 4 of respondents' Statement of the Case contains a deliberate misrepresentation of petitioner's Complaint, which is accurately described in the Petition (6-7), detailing the three causes of action on which it is founded"; your petitioner wonders if the denial of certiorari herein was based upon an acceptance of respondents' misrepresentation as true, taking the word of Attorney General McBride against that of your petitioner. If so, then in opposition to such action your Honorable Court's attention is called to the fact that since the denial of certiorari herein, to wit, on April 18, 1954, counsel for respondents, Hon. Thomas D. McBride, appeared before the Senate Labor Rackets Committee to explain payments of thousands of dollars (including a Christmas gift) which he received from Philadelphia Teamsters Local 107 after he became Attorney General of Pennsylvania, all of which he claimed were legal and ethical. Nevertheless, his connection with racketeers was aired, and not for the first time. How then could your petitioner expect anything from him but such opposition, even through misrepresentation? Contrariwise to Attorney General McBride's income, your petitioner's earned income during the fifteen-year period complained of (Petition, 7) has not approached his overhead. It has been only by the grace of his hard inherited money that your petitioner has been able to afford to assert, prosecute and try to secure his rights.

3. If the denial of certiorari was based upon some unexplained technical deficiency which the Court observed in the petition, then it is respectfully submitted that this Honorable Court give full force and effect to

Rule 19, 1(b), because of the patent departures from the accepted and usual course of judicial proceedings which call for an exercise of this Court's power of supervision. The result would at least be an Order remanding the cause to the District Court for further proceedings consistent (for the first time) with the federal Rules of Civil Procedure. Furthermore, such remand is authorized in Title 28U.S.C., sec. 2106.

4. The granting of certiorari herein would resolve serious doubts about the grave issues involved, because there then would be the benefit of an Opinion of the Court even if your petitioner were not successful. Your petitioner, knows what his rights are, but all that the District Court decided was that the respondents are immune and all that the Court of Appeals decided was that your petitioner has no rights. Assuming for the sake of argument that it was unrealistic for your petitioner to expect relief from the District Court and illogical to expect protection from the Court of Appeals, is it unreasonable for him to seek help from this highest judicial tribunal at least through an Opinion?

5. Your petitioner has every right to doubt the sincerity of the politicians who advocate the protection and enforcement of civil rights, because none entrusted has ever done anything but deprive him of rights. He makes this assertion against Negro politicians as well as Whites. Are they not simply interested in civil privileges? The only two Negro jurists who have been entrusted with the protection and enforcement of your petitioner's rights are Hon. William Henry Hastie of the Court of Appeals for the Third Circuit and Hon. Harold A. Stevens of the Supreme Court of the State of New York.

County of New York. Circuit Judge Hastie has repeatedly concurred in denials of your petitioner's civil rights in the instant and prior appeals. Justice Stevens presided over your petitioner's libel action against Hearst Publishing Company, Inc., and Hearst Consolidated Publications, Inc., when the defendants made a motion for change of venue to Pennsylvania. The action was based upon false and defamatory matter published by Hearst relating to your petitioner's controversies with the respondents herein, and unwarrantedly attacking his professional status, so maliciously libelous per se that its publication would never have been permitted by the late William Randolph Hearst, Sr., or any other responsible publisher. The case is at Index No. 8858 of 1957, and on defendants' original motion Justice Stevens properly refused to hear oral arguments for the stated reason that he did not require assistance in reading the Complaint and the Motion; and on August 30, 1957, legally ordered that the motion be denied. On October 3, 1957, Justice Stevens recalled his prior Order and entered an Order granting the change of venue to Pennsylvania, on motion for reconsideration, in violation of the Rules and applicable law. Shortly thereafter Justice Stevens was elevated to the Appellate Division of said Court, which granted your petitioner (Justice Stevens having disqualified himself) leave to appeal because the question of law involved should be decided by the Court of Appeals of the State of New York. The leave to appeal was granted since the denial of certiorari herein, to-wit, on April 15, 1958, the Order to be entered April 22, 1958. As was obvious from the record therein, Justice Stevens was deciding that your petitioner's said action which was legally brought in New

York could be prosecuted only in Pennsylvania where his difficulties with members of the state and federal judiciaries would appear to preclude a fair trial with due process of law and result in further deprivations of his property, constitutional and civil rights. How would Justice Stevens feel if he were not in politics and had a damage suit which was ordered transferred to Arkansas where Governor Orval Faubus might dictate the "relief" to which he would be entitled; or to a Sister State in the South where the White Citizens' Council might control the "quantum" of his damages? In other words, will this Honorable Court by granting certiorari decide that your petitioner is not a fool for advocating the protection and enforcement of civil rights for all citizens regardless of race, color and creed; or by denying certiorari decide that your petitioner should follow the trend and so advocate for white citizens only, particularly himself and perhaps his clients?

6. On October 23, 1956, under the leadership of Hon. George Wharton Pepper of the Philadelphia bar, a statement of the Committee of One Hundred lawyers of America was signed because they were "deeply disturbed by recent attacks on the Supreme Court of the United States" (Pittsburgh Legal Journal, Vol. 104, No. 44, p. 4). They stated, "No institution of our government, including the judiciary, stands beyond the reach of criticism; but these attacks have been so reckless in their abuse, so heedless of the value of judicial review, and so dangerous in fomenting disrespect for our highest law that they deserve to be repudiated by the legal profession and by every thoughtful citizen". They indicated, "The current wave of abuse was doubtless precipitated by the school

segregation decisions, though it has by no means been limited to them". Counsel for the respondents, who was then a noted criminal lawyer and a staunch advocate of civil rights as a private practitioner, had the privilege of signing that statement. In it, he and the others resolved "to defend the Rule of Law". In view of his position herein, should not the name of Thomas D. McBride be stricken from that list to be replaced by your petitioner's name? When he stated in the Brief in Opposition (5-6) as a reason for denying the writ, "Petitioner has not been denied his liberty or his right to vote. He does not allege that he has been treated discriminatorily by reason of race or color"; did he not advocate a maintenance of discrimination, but in reverse, so that the current discrimination be against Whites (unless they are subversive) and in favor of Negroes? It is respectfully submitted that this Honorable Court should not let Hon. Thomas D. McBride persuade it to sanction such a proposition, lest he be called upon again to sign another similar statement because of attacks upon the Supreme Court of the United States.

7. Ironically, promptly after the denial of certiorari herein, your petitioner received a cordial invitation to join the Section of Judicial Administration of the American Bar Association from Mr. Justice Tom C. Clark, Chairman. His Honor's opening statement therein is, "Every lawyer has a common concern about breakdown in the administration of justice. The Section of Judicial Administration, A. B. A., offers an opportunity to do something about these problems". Since your petitioner's experiences with A.B.A. convinced him that there was no opportunity then to do something

about these problems, he submits that currently there must be a revival from the good old days of A.B.A. sincerity under the able leadership of Hon. Tom C. Clark. In support hereof, reference is hereby made to your petitioner's case against John D. Black, et al., pending in this Honorable Court at No. 788 October Term, 1956, which manifests not only a breakdown but also a total wreckage in the administration of justice and with A.B.A. support. Unless certiorari is granted therein and herein, your petitioner will indeed be obliged to accept that cordial invitation.

Wherefore, your petitioner prays that this Honorable Court grant a rehearing.

PAUL GINSBURG,
Counsel for Petitioner.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay; and that it is restricted to the grounds specified in paragraph 2 of Rule 58.

PAUL GINSBURG
Counsel for Petitioner.

Dated: 23 April 1958.